



# Southern California Coastal Sage Scrub NCCP Process Guidelines

\*\* Note - These guidelines were superceded by the NCCP Act of 2002 except for grandfathered plans (see [Section 2830](#) of the NCCP Act).

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# Summary

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The Coastal Sage Scrub (CSS) Natural Communities Conservation Planning (NCCP) Process Guidelines explain the roles of local, state, and federal government, and describe how the planning process will shift in focus from the regional to the subregional level.

## Background

The program was established by state law, the Natural Community Conservation Planning Act of 1991 (Fish and Game Code Section 2800 et. seq.). The Southern California Coastal Sage Scrub NCCP Program is the first such program developed under the law. The California Department of Fish and Game (CDFG) is the principal state agency implementing the NCCP Program. CDFG is working under the auspices of the Office of the Secretary of the Resources Agency on this pilot program.

The Regional Coastal Sage Scrub Planning Area is roughly 6,000 square miles and includes parts of five counties: San Diego, Orange, Riverside, Los Angeles, and San Bernardino. Numerous local jurisdictions and public and private landowners are affected. Coastal sage scrub is an ecological community that supports a diverse assemblage of native California plants and animals. Human activity in this five-county area has reduced the extent of coastal sage scrub to the point where conservation action is crucial to prevent endangerment of many species.

## Regional Coordination, Subregional Planning

Generally, the conservation program and the biological issues need to be coordinated across the five-county region. However, because the area is so large and because specific biological and land use planning considerations vary throughout the region, it is imperative that functional planning be conducted on a subregional scale.

During the planning period, participants agree voluntarily to protect coastal sage scrub habitat on enrolled lands and lands within their jurisdiction. The original enrollment agreements were scheduled to terminate on October 31, 1993. However, in order to enable jurisdictions to benefit from interim habitat loss provisions provided in the USFWS special rule for the California gnatcatcher [4(d) rule], all existing and new jurisdictional enrollments will be extended until the completion of the appropriate subregional NCCP or approved NCCP subarea unless a jurisdiction requests earlier termination of enrollment.

Through regional planning efforts undertaken in 1992 and 1993, it is expected that some 10 to 15 functional subregional planning areas will be formed. Most of these areas are already in some stage of planning; the rest will initiate planning in the future.

## Regional Phase

The regional phase establishes the overall scientific and legal framework for subsequent subregional efforts.

- Establish state and federal cooperation through a Memorandum of Understanding (MOU).
- Convene a Scientific Review Panel (SRP) of experts.
- Collect scientific information from land owners and jurisdictions for use by the SRP.

- Identify subregional focus areas for subregional NCCPs.
- Document ongoing multi-species conservation planning.
- Provide interim habitat protection through landowner and jurisdiction enrollments and through CDFG protection of non-enrolled land.
- Establish interagency planning, public participation and review process.
- Establish regional scientific framework for subregional planning, including survey guidelines, target species, and conservation guidelines.

## Subregional Planning Process

The subregional phase is when actual decisions regarding conservation and development are made through a collaborative process centered on local government and meshing with the conventional land planning and CEQA process.

- Specific subregional NCCP planning begins with a **Planning Agreement** between local jurisdictions, landowners, CDFG and the U.S. Fish and Wildlife Service (USFWS) (as described in Section 2810 of the Fish and Game Code). This Agreement sets forth the NCCP process as it applies to the specific planning area.
- Mandatory elements of the Planning Agreement include:
  - map of the planning boundary,
  - identification of a lead or coordinating agency and other jurisdictions affected,
  - list of species of concern to be addressed in the NCCP,
  - identification of parallel permits, if any (e.g., Federal Section 10(a)), and
  - public participation and public notice of plan preparation.
- Optional elements may include:
  - extent of state and federal agency participation,
  - identification of land ownerships,
  - discussion of the specific extent of biological information,
  - specific survey methods to be used to fill data gaps,
  - other aspects germane to the specific NCCP subregion.
- Subarea Planning Agreements for implementation of portions of a subregional NCCP can be authorized, subject to acceptance by CDFG and USFWS.
- Collaborative planning commences under auspices of lead or coordinating agency with CDFG and USFWS providing ongoing guidance and with appropriate public participation.
- Completed NCCP plan is published in Draft form along with appropriate CEQA and NEPA compliance documents (eg., program EIR, Joint state/federal EIR/EA or EIS).
- CDFG and USFWS comment along with members of the interested public during a set time period. Because they have been involved throughout the planning process, it is expected that CDFG and USFWS will be able to accept the plan. If they cannot, however, they must identify specific changes to the plan that need to be made to meet requirements.
- Lead or coordinating agency finalizes plan. Lead or coordinating agency, CDFG, USFWS and other parties as appropriate enter into an **Implementing Agreement**. This agreement specifies all terms and conditions of activities under the NCCP plan. By signing the Implementing Agreement, CDFG and USFWS explicitly acknowledge approval of the Final NCCP plan.
- Lead or coordinating agency or other Implementing Agreement parties report activity under the plan routinely to CDFG and USFWS demonstrating compliance, as outlined in the Implementation Agreement.

## Federal Involvement and the Endangered Species Act

The NCCP process does not supplant the endangered species protection of existing state or federal law. At present, only a few coastal sage scrub associated species, such as the coastal California gnatcatcher, are formally listed as endangered or threatened under either state or federal endangered species acts. By taking a comprehensive ecosystem approach to conservation it is hoped that the NCCPs will forestall endangerment of other coastal sage scrub species, thereby avoiding the necessity of subsequent listings.

If species become listed, or if an already listed species other than the California gnatcatcher is found in the NCCP area, the jurisdictions or landowners affected will still need to obtain a federal Section 10(a) or state Section 2081 permit for activities that would involve take of listed species. However, the NCCP is meant to meet the requirements of both a state Management Authorization and a federal Habitat Conservation Plan to allow issuance of the appropriate permits if they are needed.

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## 1.1 Statutory Basis

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The Natural Community Conservation Planning (NCCP) program is authorized by California law: the Natural Community Conservation Planning Act of 1991 (AB 2172), set forth in Section 2800 et. seq. of the California Fish and Game Code.

The Coastal Sage Scrub (CSS) NCCP is the first such planning effort to be initiated under the Act. It is undertaken as a pilot project to develop a process for accelerated conservation planning at a regional scale which may serve as a model for other NCCPs elsewhere in the state.

Because the CSS NCCP program is a pilot program for possible application elsewhere in California, it is sponsored jointly by the California Resources Agency and the California Department of Fish and Game (CDFG). Where these process guidelines refer to participation in agreements or other action by CDFG, it should be understood that for this program, this means both the Resources Agency and CDFG. Both state agencies are proceeding in cooperation with the U. S. Fish and Wildlife Service (USFWS) (See 12/4/91 MOU between CDFG and USFWS).

## 1.2 Program Purpose

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The purpose of the Natural Community Conservation Planning program is to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible land use and appropriate development and growth. These goals will be achieved through implementation of a Natural Community Conservation Plan (NCCP).

The NCCP process is designed to provide an alternative to current "single species" conservation efforts by formulating regional, natural community-based habitat protection programs to protect the numerous species inhabiting each of the targeted natural communities. The shift in focus from single species to the natural community level will greatly enhance the effectiveness of ongoing species protection efforts.

It is intended that NCCPs will result in land use plans and management programs for the long-term protection of designated habitats and their component species. The planning process will be carried out with the voluntary and collaborative participation of landowners, local governments, state and federal agencies, and environmental organizations.

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### 1.3 Southern California CSS Program

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This program, the first of the State's NCCP projects, provides the direction and collaborative support necessary to conduct research, planning, and habitat management efforts leading to long-term conservation and protection of species in the coastal sage scrub community of southern California.

According to the Coastal Sage Scrub Scientific Review Panel (SRP), approximately 100 species (plants and animals) considered rare, sensitive, threatened, or endangered by Federal and State resource agencies are associated with coastal sage scrub. The array of sensitive species within the coastal sage scrub community that would potentially benefit from this initial NCCP process illustrates the rationale of the proposed shift in focus from species to the natural community. The SRP has identified three target species within the CSS (two birds: California gnatcatcher, cactus wren, and one lizard: orange-throated whiptail) for detailed study. Information on these target species along with other natural community conservation guidelines will be used in planning individual subregional NCCPs.

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## 1.4 CSS Planning Area

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The Coastal Sage Scrub NCCP pilot project creates a regional planning and management system designed to protect coastal sage scrub habitat and reconcile conflicts between habitat protection and new development within the Southern California study area. Although coastal sage scrub is found further north as well, the study area for the Coastal Sage Scrub NCCP project embraces portions of five counties: San Diego County; Orange County; Riverside County; San Bernardino County; and Los Angeles County (See SRP Special Report No. 2, "Conservation Planning Region").

The five-county study area will be divided into several large planning subregions in order to minimize the inherent problems related to addressing the entire region in a single planning effort. These subregions will be designated by participating local jurisdictions, subject to approval by CDFG and based on the analysis provided by the SRP. Designated planning subregions will consist of large areas where the cumulative impacts of development on coastal sage scrub can be analyzed. These subregions also will be large enough, in terms of the presence of sufficient coastal sage scrub and associated natural habitat acreage and species diversity, to constitute effective habitat planning units. All NCCPs will be prepared and submitted by landowners and/or local jurisdictions to CDFG on a subregional basis. Some subregions may need to break down into smaller subareas for planning purposes.

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## **1.5 Enrollment During Planning Period**

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Planning for long-term management and protection of coastal sage scrub natural community will be initiated by participating landowners and local jurisdictions enrolled in the NCCP process. The purpose of enrollment is to: 1) protect "enrolled" coastal sage scrub habitat during the planning period, and 2) to initiate the collaborative planning process which will result in long-term habitat protection through an NCCP.

The original enrollment agreements were scheduled to terminate on October 31, 1993. However, in order to enable jurisdictions to benefit from interim take provisions established in the USFWS special rule [4(d) rule], all existing and new jurisdictional enrollments will be extended until the completion of the appropriate NCCP unless a jurisdiction requests earlier termination of enrollment.

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## 1.6 NCCP Planning Guidelines

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Fish and Game Code Section 2825 authorizes the California Department of Fish and Game to prepare nonregulatory guidelines that will facilitate and expedite the preparation and implementation of natural community conservation plans statewide. The guidelines are intended to improve understanding of the NCCP program among potential private and public participants, thereby encouraging early participation in NCCP process, increasing the effectiveness of the program, and ensuring that proposed plans will ultimately gain approval.

CDFG seeks to use the CSS pilot project to direct its future effort on the statewide guidelines.

The CSS NCCP Process Guidelines published here explain how the regional coordination effort will lead to individual subregional NCCPs. The Process Guidelines are referenced by the enrollment agreements as a basis for voluntary participation.

The Process Guidelines incorporate by reference the Conservation Guidelines developed by CDFG for the CSS program.

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## 1.7 NCCP and Endangered Species Acts

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The NCCP process does not supplant the endangered species protection of existing state or federal law. At present, only a few coastal sage scrub associated species, such as the coastal California gnatcatcher, are formally listed as endangered or threatened under either state or federal endangered species acts. By taking a comprehensive ecosystem approach to conservation it is hoped that the NCCPs will forestall endangerment of other coastal sage scrub species, thereby avoiding the necessity of subsequent listings.

The California gnatcatcher was listed by the USFWS as a threatened species on March 25, 1993. At the time the gnatcatcher was listed, the USFWS proposed a special rule under Section 4(d) of the Endangered Species Act (ESA), that defined the conditions under which take of the gnatcatcher would not be considered a violation of Section 9 of the federal ESA. When the rule is finalized (anticipated in November, 1993), activities conducted in enrolled jurisdictions pursuant to the NCCP Guidelines (Process Guidelines and Conservation Guidelines) that will involve take of gnatcatchers will not result in violations of Section 9 of the ESA. Therefore, no Section 10(a) permit would be needed for take of gnatcatchers for these activities.

If other species become listed, or if an already listed species is found in the NCCP area, the jurisdictions affected will still need the applicable federal Section 10(a) or state Section 2081 permit; however, the NCCP is meant to meet the requirements of both a state Management Authorization and a federal Habitat Conservation Plan to allow issuance of the appropriate permits provided the approved NCCP has adequately addressed those particular species.

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## 2. CSS NCCP Planning Milestones

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Both conservation and development community interests will be well served by rapid progress on NCCPs. The overall program is intended to incorporate the following NCCP planning milestones. Local conditions will vary, and not all jurisdictions or subregions will be able to respond fully within the suggested timeframes. Participants are encouraged to meet the targeted milestones for cited tasks and work products.

### **November, 1993**

- CDFG publishes final NCCP Process Guidelines and Conservation Guidelines.
- USFWS publishes final special rule for the gnatcatcher.
- Initial jurisdictional enrollments are extended following final publication of the Section 4(d) special rule for the gnatcatcher.

### **November, 1993 and continuing.**

- Implement interim habitat loss provisions.
- CDFG evaluates NCCP program status and considers options for areas without completed plans.
- Monthly informational report by CDFG to the California Fish and Game Commission concerning NCCP program status.
- Periodic informational report by CDFG to the California legislature.
- Research undertaken to fill information needs.
- Preparation, submittal, and review of NCCP plans.

### **Summer, 1994.**

- Completion of first NCCP plans.

### **Fall, 1994.**

- Approval of first NCCP plans.
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### **3. Regional Planning**

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Coastal Sage Scrub habitat under study is scattered broadly over portions of a five-county area in southern California. While long term conservation will come about from specific subregional NCCPs, the scientific and procedural framework for the subregional plans will be established at a regional scale.

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### 3.1 State and Federal Wildlife Agency Coordination

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Because both state and federal wildlife agencies have clear legal mandates to protect endangered species, both agencies have an interest in the natural community approach to conservation. The overall intent for state and federal coordination is expressed in the 12/4/91 MOU between the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

On March 25, 1993, the Secretary of Interior listed the coastal California gnatcatcher as a threatened species. At the time of the listing the Secretary proposed a special rule that strongly supported the NCCP efforts and would closely tie the NCCP program to federal actions under the Endangered Species Act.

State and federal coordination will occur throughout the process, but focuses on four phases:

- a. Exchange of scientific information and cooperative review of recommendations from the Scientific Review Panel to assist CDFG in promulgating survey, subregion, conservation, and process guidelines that can be applied uniformly throughout the region and which will be consistent with both state and federal policies.
- b. Initiation of specific subregional NCCPs or acceptance of Ongoing Multi Species Plans (see section 3.6) to make clear what requirements the plans must meet. This includes a joint effort to establish criteria for review and ultimate acceptance of a subregional plan. This will allow subregional planning efforts to prepare a *single* conservation plan that will meet both state and federal requirements.

Where appropriate, the CDFG and USFWS can accept the delineation and planning of subareas within subregions, provided subareas adhere to and conform with the basic subregional goals and objectives. Subareas must contain a section that indicates how that subarea implements the larger subregional effort and integrates its preserve areas across subregional boundaries.

- c. Establishment of procedures, consistent with the 4(d) rule, for subregions to utilize during the interim, planning period including procedures for monitoring interim habitat loss.
  - d. Cooperative review of draft plans to coordinate requested modifications, requirements for monitoring, issuance of parallel permits (if any), and compliance with CEQA and NEPA in a time matched to the local plan adoption process.
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## 3.2 Scientific Review Panel

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By agreement between USFWS and CDFG in a MOU (12/4/91), CDFG established a Scientific Review Panel (SRP) for the CSS NCCP. According to the MOU, "information and analysis undertaken by the SRP shall be presumed to constitute the best scientific information available until, and unless, further credible analysis and investigations show the contrary". The SRP is described in NCCP Special Report No. 1.

The role of the SRP is to collect readily available data and to integrate the information into a region-wide scientific framework for conservation planning activities. The scientific framework is to be communicated via a series of recommendations regarding: scientific survey methods, appropriate focus areas for subregional planning, and region-wide conservation needs.

The SRP recommended a conservation strategy in March 1993 to serve as a basis for the state's Conservation Guidelines. CDFG and USFWS staff worked with the SRP to prepare the draft Conservation Guidelines published in June, 1993 and revised in November, 1993.

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## **3.3 Program Enrollment**

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The success of the NCCP program relies on conservation and management of a high percentage of the currently remaining coastal sage scrub habitat.

### **3.3.1 General Enrollment**

Cities and counties are encouraged to participate in the NCCP process by entering into an enrollment agreement with CDFG, including commitments to the following standards for the duration of the collaborative planning period. Agreements may be modified to reflect special circumstances or individual needs upon approval by the Department.

Jurisdictional enrollment provides for a cooperative effort to initiate actual long term NCCP planning. This includes sharing survey data and generally heightening awareness of the NCCP program in the jurisdiction.

Because they were asked to enroll prior to preparation of the guidelines, enrollees have the option to withdraw from the NCCP process if the guidelines or subregion designations are not acceptable to the enrollee. However, enrollment and active participation in subregional planning are integral to the interim take provisions of the special rule for the California gnatcatcher,

### **3.3.2 Enrollment Equivalent on State and Federal Lands**

Substantial CSS habitat occurs on state or federally owned land. Major examples are the Cleveland National Forest, Military facilities at NAS Miramar and Camp Pendleton, and the Chino Hills State Park. Some public lands are governed by law that precludes use of the same enrollment process that is available for local jurisdictions.

However, most such public land has an established internal program of research and land use evaluation that fulfills the same objectives as the formal enrollment process: heightened protection of CSS, ongoing research, and progress toward long term conservation planning.

For the state's purpose of limiting CSS loss during the planning period and establishing subregional coordination among major landowners, the availability of a state or federal CSS management program comparable to the planning and habitat loss provisions of NCCP will be viewed as being commensurate with formal enrollment.

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### 3.4 Non-Enrolled Land

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Land not enrolled through jurisdictional enrollments will still be subject to the requirements of CEQA and the federal Endangered Species Act.

CEQA has a mandatory finding of significance wherever:

"(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, .." (CEQA Guidelines, section 15065)

By that standard, most CSS habitat in the NCCP Program area is sensitive and could trigger these CEQA findings.

Section 9 of the federal Endangered Species Act prohibits take of a listed animal. With the federal listing of the California gnatcatcher, much CSS is subject to federal protection. Without participation in the NCCP program, a jurisdiction issuing land use approvals that may result in incidental take of the California gnatcatcher may be in violation of federal law. Similarly, landowners who develop land or otherwise engage in activities that result in take without authorization from an enrolled jurisdiction would be in violation of the federal ESA.

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### 3.5 Subregional NCCP Focus Areas

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The SRP reviewed information on distribution and made a preliminary recommendation of the large CSS habitat areas that should serve as focus areas for designation of subregional NCCPs. The draft focus area map and interpreting text was published in May 1992 and the final report was published in August 1992.

It is expected that subregional NCCPs will attempt to delineate planning areas that include large, manageable CSS habitat and suitable peripheral corridor and buffer habitat areas. Corridor and buffer areas are likely to consist of habitats other than CSS. Generally, a subregional planning area should include all of a focus area, but it is recognized that some subdivision of focus areas may be needed to reflect jurisdictional and land ownership patterns.

Regardless of how a NCCP subregion is drawn, the boundary will be approved by CDFG and USFWS in advance of actual planning when CDFG and USFWS enter into a Planning Agreement (see section 4.1). In the course of planning, the subregional plan will need to explicitly treat the need to integrate with CSS conservation needs *outside* of the immediate planning area by providing for corridors or other features that will improve region-wide habitat values.

The focus areas identified by the SRP are by no means the only areas of CSS and associated habitats of potential conservation value. It is intended that the subregional planning areas will be drawn broadly to encompass both large and small CSS habitat and areas which serve as corridors for interconnection between CSS habitats. With the possible exception of completely urbanized areas, the entire five-county CSS planning area will eventually be included in subregional CSS NCCPs.

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### 3.6 Ongoing Multi-Species Plans

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The CSS planning area has several active, large-scale conservation planning activities that have similar form and content to a NCCP. These so-called Ongoing Multi-Species Plans (OMSP) can be accepted into the CSS NCCP process with little or no change. It is easy to consider a prior conservation planning activity as equivalent to enrollment or a Planning Agreement as a NCCP; ultimately, all plans -- whether NCCPs or OMSPs -- must meet the same standards for protection of coastal sage scrub habitat.

For a conservation plan to qualify as an OMSP and be accepted as an NCCP, all of the following must hold:

- a. The planning effort was funded and was underway as documented by either a memorandum of understanding, an agreement, a statutory exemption, or other formal process at the time that the NCCP Act became effective (1/1/92).
  - b. The plan protects CSS habitat and/or contains an agreement for satisfactory mitigation for any CSS loss approved by CDFG pursuant to a prior planning effort, and the plan substantially achieves the objectives of the NCCP Act, meaning that the plan provides assurance that CSS habitat and named species will be protected to a degree substantially equivalent to an NCCP prepared under the guidelines.
  - c. California Department of Fish and Game approves the plan and the plan meets CESA Section 2081 Management Agreement requirements for named species of concern.
  - d. U.S. Fish and Wildlife Service approves the plan and it provides the equivalent of federal ESA Section 10(a) habitat conservation plan requirements for named species of concern. ]Because an OMSP will have commenced before all NCCP guidelines were in place, an OMSP may differ in detail from the NCCP process described here. A qualifying OMSP may include, among other things:
    - (1) Habitat and species in addition to CSS habitat and species.
    - (2) Boundaries different from CSS subregions as long as the boundaries have been previously approved by CDFG and do not significantly impair the long-term opportunities for conserving CSS region-wide.
    - (3) Survey methodologies may differ from the SRP recommended guidelines as long as the methods used have been approved by CDFG.
    - (4) Timing requirements may differ from the target milestones for the CSS NCCP.
    - (5) The prior planning effort includes provision for CDFG participation in planning and reimbursement of CDFG expenses.
    - (6) The prior planning effort may include provision for USFWS participation in planning.
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### **3.7 Regional Conservation Guidelines**

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A central element of the regional CSS NCCP coordination is promulgation of a set of conservation guidelines. These guidelines will accelerate the planning process by providing subregions with a general set of scientific principles and preserve management tools.

CDFG published draft Conservation Guidelines based on recommendations by the Scientific Review Panel. CDFG, after considering public comments, finalized the Conservation Guidelines in November, 1993.

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## **4. Process for Securing Interim Approvals for CSS Habitat Loss**

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The following procedure is set forth to govern activities during the subregional planning phase, prior to completion of a subregional NCCP. These procedures are intended to allow local jurisdictions to benefit from the 4(d) rule.

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## 4.1 Subregional Responsibilities

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- a. A subregional planning process shall be established. This entails defining subregion boundaries, establishing a lead or coordinating agency, and executing a planning agreement among participating local governments, private landowners, the lead or coordinating agency, CDFG, and USFWS.
  - b. Consistent with these guidelines and the Conservation Guidelines, the subregional lead or coordinating agency shall:
    - (1) Establish base number of acres of coastal sage scrub (CSS) habitat in each subregion based on local maps from field surveys conducted according to the Scientific Review Panel (SRP) survey guidelines or on vegetation maps submitted in digital form approved by CDFG/USFWS; in any case the base number of acres shall not be less than that which existed on March 25, 1993, the date the gnatcatcher was determined to be a threatened species.
    - (2) Calculate 5% estimate for interim habitat loss.
    - (3) Establish interim habitat loss mitigation guidelines appropriate for each subregion. The guidelines shall seek to minimize project impacts to CSS habitat consistent with the Conservation Guidelines. The CDFG and USFWS must concur with these guidelines. Mitigation may be approved on a case by case basis prior to adoption of the guidelines. See section 4.3.
    - (4) Keep a cumulative record of all approvals for "interim habitat loss," including adjustments of totals if approvals expire, to assure the 5% interim habitat loss guideline is not exceeded in the subregion. Interim habitat loss approval status should be forwarded to the USFWS at least once a month.
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## 4.2 Local Agency Interim Habitat Loss Approvals

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- a. Applications for interim habitat loss permits are limited to projects proposed to proceed with grading in the near term. Habitat loss permits may be conditioned on payment of applicable development fees, including any mitigation fees. Any interim habitat loss approval shall expire if substantial site work or other site development activities have not commenced within one year from the permit issuance.
- b. The application for interim habitat loss must be submitted to the local jurisdiction with entitlement responsibility for the associated project.
- c. Applications should include a mitigation plan which is justified as appropriate to the proposal.
- d. Projects impacting intermediate and high value CSS habitat should involve USFWS early in planning stages to avoid unnecessary delays during the final approval process. Development decisions having a substantial adverse impact on high value habitat should be deferred until completion of the NCCP, if possible. Impacts to high value areas will require, and impacts to intermediate habitat may require, special mitigation. Impacts in higher value areas must demonstrate that the loss will not foreclose future reserve planning options as stated in the Conservation Guidelines.
- e. Local agencies may determine specific application and process requirements, provided that interim habitat loss requests are integrated into the regular project entitlement process as much as possible and public notice and opportunity for public comment is provided according to law prior to the final decision by the local agency.
- f. California Environmental Quality Act (CEQA) review, consistent with applicable requirements of state law, will be undertaken by the local agency to provide an appropriate level of analysis in order to make the required findings.

(1) If the project proposed for interim habitat loss has already obtained final CEQA approval, the local government will determine whether the CEQA document addressed potential CSS impacts and potential impacts on gnatcatcher populations and minimized and mitigated the impacts to the gnatcatcher. If the local jurisdiction determines that the project impacts have not been mitigated consistent to the above standards then the project must meet mitigation requirements of 4.3.

(2) If no CEQA review has previously been undertaken, then CEQA review shall be necessary, consistent with current law, and the project must meet the mitigation requirements of 4.3.

- g. To approve an interim habitat loss application, the local agency must make the following findings, based on the information obtained pursuant to Section 4.2a above and the applicable CEQA review:

(1) The proposed habitat loss is consistent with the interim loss criteria in the Conservation Guidelines and with any subregional process if established by the subregion.

- The habitat loss does not cumulatively exceed the 5% guideline.
- The habitat loss will not preclude connectivity between areas of high habitat values.
- The habitat loss will not preclude or prevent the preparation of the subregional NCCP.
- The habitat loss has been minimized and mitigated to the maximum extent

practicable in accordance with 4.3.

- h. The habitat loss will not appreciably reduce the likelihood of the survival and recovery of listed species in the wild.
- i. The habitat loss is incidental to otherwise lawful activities.

Projects meeting these criteria may be prioritized based on the likelihood of imminent development or which otherwise provide significant public benefit.

The project and the draft findings for the interim habitat loss approval proposed by the local government shall be made available for comment to the subregional lead or coordinating agency, CDFG, USFWS, and the public at least 45 days prior to the local agency action on the proposed project and findings.

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### 4.3 Interim Mitigation

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Project design must be consistent with the Conservation Guidelines and with any guidelines adopted by the subregion and concurred with by the CDFG and USFWS and must, to the maximum extent practicable, minimize habitat loss. Prior to the adoption of subregional guidelines, local agencies may approve mitigation on a case by case basis as long as it is consistent with the conservation guidelines.

Any impacts to the coastal sage scrub habitat and the target species must be mitigated to insignificant levels as required by the California Environmental Quality Act(CEQA) by using one or more of the following options:

- Acquisition of habitat
- Dedication of land
- Management agreements
- Restoration
- Payment of fees
- Transfer of development rights
- Other mitigation measures approved in writing by CDFG and USFWS.)

Appropriate mitigation must be identified in a mitigation plan prepared by the applicant. The applicant must demonstrate capacity for funding appropriate mitigation and the mitigation must be legally assured. Habitat acquisition and set asides should occur in areas with long-term conservation potential.

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## 4.4 USFWS Concurrence

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- a. Once a local agency has completed its review and approval, it shall notify the subregional lead or coordinating agency. The subregional lead or coordinating agency shall review the interim habitat loss approval to confirm that it does not exceed the 5% habitat loss guideline or prejudice the preparation and implementation of the subregional NCCP. The subregional agency shall communicate its findings in writing to the appropriate local agency within 15 days after receipt of local agency notification.
  - b. Within 5 days of receiving subregional agency confirmation, the local agency shall post public notice of its decision and notify CDFG and USFWS of its actions and findings, including the findings by the subregion. Notification of CDFG and the USFWS shall include project and biological information, including the mitigation plan, and delineate the location of the boundaries of the subject project on a 7.5 minute U.S. Geological Survey (USGS) quadrangle map.
  - c. USFWS, in close coordination with CDFG, shall review the project for consistency with the Conservation Guidelines and any approved subregional habitat loss mitigation guidelines. If the USFWS concludes the project, as approved and mitigated, is inconsistent with the Conservation Guidelines or any approved subregional mitigation guidelines, the California State Supervisor shall notify the local approving agency within 30 days of receipt of the notice. Within 60 days after notification of inconsistency, the USFWS, after consultation with CDFG, shall provide recommendations for modifying the project or mitigation to eliminate the inconsistency(ies). Once USFWS has provided notice under this section, and until it concurs that the project as modified is consistent with the Conservation Guidelines and mitigation guidelines, the project may not proceed. Once the USFWS, the approving agency, and the project proponent agree that there are no longer inconsistencies, the project can proceed. If no notification is provided by the USFWS within 30 days, the proposed habitat loss shall be deemed approved and may proceed as approved by the local agency.
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## 4.5 Termination of Interim Period

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- a. Upon the approval of an NCCP by the USFWS and CDFG, (see section 5.4) the interim period in the subregion shall terminate and the rules for interim habitat loss shall be replaced by the "Habitat loss Provisions" of the approved NCCP plan within the geographic area governed by the NCCP.
  - b. As required under the provisions of the Section 4(d) rule for the gnatcatcher, the USFWS shall monitor the implementation of the Conservation Guidelines and the NCCP Process Guidelines to ensure that the implementation of both sets of guidelines are effective in progressing towards meeting regional and subregional conservation objectives. Such monitoring will occur every six months. If, during its review of the implementation of the guidelines, the USFWS determines that either the Conservation Guidelines or the Process Guidelines are no longer effecting adequate progress towards meeting regional and subregional conservation objectives, the USFWS shall consult with the Department to seek appropriate modification of the Guidelines and/or their implementation. If appropriate modification of the guidelines does not occur the USFWS shall publish a public notice of its intention to revoke the provisions of the special rule on a subregional or subarea basis. Following receipt of public comments, the USFWS shall publish its determination.
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## 5. Subregional Planning

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The actual conservation planning will be conducted within ten to fifteen subregions. The NCCP process is intended to give flexibility to each subregional effort to reflect local conditions while adhering to fundamental regional conservation principles.

To expedite completion of NCCPs the program is designed to:

- encourage maximum cooperation between landowners, local governments and conservation interests during the preparation of NCCPs; and
- encourage local government participation by allowing local governments to adapt the NCCP process to their *existing* administrative processes relating to plan preparation, public participation, public hearing, and environmental review.

With these broad goals in mind, the local government process leading to preparation and approval of subregional NCCPs should be compatible with the following steps:

- a. Local governments and landowners will cooperate in designating NCCP subregions of sufficient size and diversity to meet the CDFG Conservation Guidelines and to be effective long-term habitat management units pursuant to Fish and Game Code (Section 2800 et. seq.).
  - b. Participating local governments and agencies will enter into a **Planning Agreement** with CDFG and USFWS to establish a coordinated subregional NCCP preparation and decision-making process that effectively involves enrolled participants, and the public. Public participation shall be at least equivalent to that provided by existing ordinances, hearings, public notice requirements and laws.
  - c. Landowners, conservation interests, and appropriate local government agencies, in consultation with the Resources Agency, CDFG, and USFWS, will formulate a conservation plan. This NCCP will satisfy all applicable requirements of the California ESA, the Federal ESA, CEQA and NEPA. Pursuant to the Planning Agreement, the principal affected local government agency will act as the initial lead or coordinating agency for CEQA purposes, and for any actions necessary to assist USFWS compliance with NEPA.
  - d. After public and agency review, the plan will be finalized and serve as the basis for an **Implementing Agreement** between involved parties and CDFG and USFWS.
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## 5.1 Planning Agreement

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Specific subregional NCCP begins with a Planning Agreement between local jurisdictions, landowners, CDFG and USFWS (as described in Section 2810). This Agreement sets forth the NCCP process as it applies to the specific planning area.

Mandatory elements of the Planning Agreement include:

- map of the planning boundary,
- identification of a lead or coordinating agency and other jurisdictions participating or affected but not participating,
- list of target species and any other species of concern to be addressed in the NCCP,
- identification of parallel permits, if any (eg., Federal Section 10(a) for a listed species other than the California gnatcatcher),
- identify affected state and federal land ownerships,
- identify any other habitat conservation plans or multi-species conservation plans completed or underway in the area affected,
- schedule for plan preparation, public review, and agency approval,
- public participation and public notice of plan preparation.

Optional elements may include:

- extent of state and federal agency participation,
  - funding for plan preparation and for local government or public participation,
  - identification of land ownerships,
  - discussion of the specific extent of biological information,
  - specific survey methods to be used to fill data gaps,
  - provisions for coordinating with other subregions, the CDFG, and the USFWS to accommodate, where appropriate and consistent with the Conservation Guidelines, the exchange of conservation, development, and mitigation lands/credits across subregional boundaries. (Such transfers would not reduce the standards that the subregions must meet to obtain approval of their respective NCCP plans.)
  - other aspects germane to the specific NCCP subregion.
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## **5.2 Plan Formulation**

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Collaborative planning commences under auspices of lead or coordinating agency with CDFG and USFWS providing ongoing guidance and with appropriate public participation.

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### 5.3 Public and Agency Review

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The local lead or coordinating agency will review the proposed NCCP in accordance with existing local administrative/regulatory procedures and with the provisions of the Planning Agreement. The lead or coordinating agency then publishes the completed NCCP plan in Draft form along with CEQA compliance document.

The Draft NCCP will be reviewed by CDFG and USFWS along with members of the interested public during a set time period.

In reviewing and approving the subregional NCCPs, CDFG, in coordination with USFWS, will employ the Conservation Guidelines concerning habitat needs, species distribution and abundances, and other biologic considerations. As an additional part of its review and approval, CDFG will apply the provisions of Fish and Game Code Section 2081 to determine whether the NCCP provides a level of protection for named species, whether formally listed or not.

USFWS, in coordination with CDFG will apply the provisions of Section 10(a) of the Federal ESA and make findings whether the draft subregional NCCP meets the criteria for issuance of a Section 10(a) permit pursuant to the Federal ESA for any named species, whether formally listed or not.

The California Department of Fish and Game will consult administratively with the U.S. Fish and Wildlife Service regarding acceptability of the draft NCCP. If CDFG and USFWS approve of the NCCP, the lead or coordinating agency will be notified to submit the Implementing Agreement for action.

Because the agencies have been involved in the planning, it is expected that the plan will be acceptable. If however CDFG and USFWS cannot accept the NCCP as drafted, the agencies shall prepare a written report within 60 days outlining the reasons for rejecting the NCCP, and suggested modifications that would result in acceptance of the NCCP. This report will be submitted to the local lead or coordinating agency for review and action. Because CDFG and USFWS will generally be routinely consulted during NCCP preparation, rejection of a completed plan is likely only if the agencies advice was not followed.

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## 5.4 Implementing Agreement and Formal NCCP Approval

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Upon receipt of public comment and the results of CDFG and USFWS review, lead or coordinating agency finalizes plan.

The lead or coordinating agency, CDFG, USFWS and other parties as appropriate enter into an **Implementing Agreement** (described in Section 2810 of the Fish and Game Code). This agreement specifies all terms and conditions of activities under the NCCP plan. By signing the Implementing Agreement, CDFG and USFWS explicitly acknowledge approval of the Final NCCP plan and declare that the NCCP meets the requirements of a state Management Agreement or a federal Habitat Conservation Plan, respectively, to allow issuance of appropriate permits for target or other named species, should those species become listed.

The Natural Communities Conservation Planning Act does not establish a specific permit process for NCCPs. The CDFG and USFWS participation in the Implementing Agreement is the only formal "approval" process.

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## 5.5 Environmental Documentation

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Pursuant to the Planning Agreement entered into by local governments and CDFG, the environmental impact report (EIR) for a subregional NCCP will be prepared as a "Program EIR" in accordance to Section 15168 of the CEQA Guidelines. As provided in the CEQA Guidelines, the preparation of a Program EIR will avoid duplicative reconsideration of basic policy considerations and ensure consideration of the cumulative effects of planned development and other actions provided in the subregional NCCP. Funding for preparation of the NCCP EIR will be the responsibility of the lead or coordinating agency as is the case for any other EIR.

At the start of a NCCP, the Planning Agreement will make explicit the extent of federal involvement and agency obligations under the National Environmental Policy Act (NEPA) will be assessed. As appropriate, the NCCP lead or coordinating agency will provide documentation to assist the U.S. Fish and Wildlife Service in NEPA compliance. Both state and federal law allow for preparation of a joint state/federal environmental document.

Once the Program EIR for a subregional NCCP is certified and becomes final and the NCCP is approved by local governments and CDFG, mitigation for impact on designated species from developments provided within the NCCP will be those specified in the NCCP and any subsequent Implementation Agreement. The limitation of mitigation measures is subject to the "unforeseen circumstances" provisions of the Planning Agreement and CEQA provisions.

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## 5.6 Public Participation

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Public participation is essential to the ultimate success of both the Natural Community Conservation Planning process and the actual NCCPs that result from the process. The process seeks to ensure cooperation between landowners, public agencies, and other public/private interests to facilitate early coordination of planned habitat management efforts and to maximize efficient use and protection of habitat and economic resources.

This participation will be established as appropriate to each subregion and could include noticed hearings, public workshops, formal advisory committees or other activities. The collaborative planning process envisioned as a part of the NCCP program relies on participation by a wide range of private citizens.

**Landowners.** The NCCP process will require the broad-based support of private landowners. As described in the Enrollment Guidelines, participating landowners enter into agreements with the Resources Agency and Department of Fish and Game and are encouraged to cooperate with local governments to develop subregional NCCPs for the jurisdiction or NCCP subregion in which the property is located.

**Conservation Organizations.** Several statewide conservation organizations and numerous local environmental interest groups are involved in CSS species preservation efforts. While the exact role of conservation organizations will vary according to the needs of each subregional NCCP effort, it is important to recognize these organizations as a major constituency for conservation decisions as well as a significant source of scientific information and as a possible future land steward in plan implementation.

**Other Private Interests.** The NCCP will potentially affect many other private interests, particularly those associated with the construction industry (builders and labor), agriculture, recreation, tourism, and public utilities. CDFG should be contacted by any concerned group to obtain the identity of the subregional NCCP lead or coordinating agency for their area.

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## **5.7 Regional Public Utilities**

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Public utility-related activities often occur in linear project areas. There are also circumstances in which a proposed public utility project may cross a jurisdiction which has declined to enroll in the NCCP Program. In these unique cases the utilities may be treated as subregions for planning purposes. This planning method will be considered on a case by case basis for regional entities such as electrical, gas, and water utilities. Linear projects that are located within a geographical subregion or cross into adjacent subregions must be included with the plans for those subregions. Any habitat destroyed within a subregion or subarea during the interim planning phase will be tallied against the subregion's or subarea's 5 percent interim habitat loss allocation.

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## 5.8 Parallel Federal and State Permits

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A variety of state and federal laws may apply to the area subject to a subregional NCCP. Inasmuch as any other law affects land planning and conservation issues, it is desirable that the NCCP anticipate these requirements so as to minimize conflicting purposes. For example, if a NCCP planning area contains other sensitive habitats, such as riparian or vernal pool, the NCCP can provide for conservation of these other habitats, even though the other habitats are not elements of the southern California coastal sage scrub community and their conservation would not be required to meet the Conservation Guidelines for a CSS NCCP.

In particular, the NCCP process does not supplant the endangered species protection of existing state or federal law. If other species become listed, or if an already listed species is found in the NCCP area, the jurisdictions affected may still need the applicable federal Section 10(a) or state Section 2081 permit if they propose activities that would result in take of a listed species. The Planning Agreement used to initiate a subregional NCCP will acknowledge that the conservation plan incorporated in a subregional planning effort. The objective of monitoring and evaluation is to confirm satisfactory progress on NCCP planning and assure protection of CSS habitat.

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## **6. Monitoring and Evaluation**

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During 1992 and 1993, the Southern California Coastal Sage Scrub Natural Community Conservation Planning process focused on initiating a broad series of subregional activities. Eventually, the interim planning period will pass and CDFG will need to evaluate the status of regional/subregional planning efforts.

The NCCP process outlined in these guidelines will lead to a series of subregional plans progressing at different rates. CDFG and USFWS will monitor progress by each subregion and evaluate biological conditions in the focus areas that are not formally

### **6.1 NCCPs Complete or Near Completion**

Each subregional NCCP will be implemented through an agreement that specifies monitoring, reporting and enforcement requirements. Regionwide monitoring and subregional reporting will enable the California Department of Fish and Game to assess the overall status of the CSS community and its constituent species. If conservation goals are not being achieved, this assessment will be the basis for CDFG action to enforce provisions of the Implementing Agreement or may be the basis to find that unforeseen circumstances warrant additional conservation actions.

### **6.2 Areas Not Subject to a NCCP**

In some areas no jurisdiction or landowner may be willing to come forward to initiate planning. Unfortunately, lack of adequate planning may jeopardize conservation activities elsewhere in the region. In these places, CDFG and USFWS will appraise the extent of threat to CSS and initiate long term conservation actions for CSS and constituent species if warranted. This may include requesting the Fish and Game Commission to list one or more CSS species as endangered under the California Endangered Species Act.

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## 7.1 Glossary

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The following terms and abbreviations are used in this document:

**CDFG:** California Department of Fish and Game. For the purposes of the Southern California CSS NCCP Program, the Department is working in close coordination with the Office of the Secretary of the Resources Agency. In these Process Guidelines, references to participation by CDFG generally means joint participation with the Resources Agency.

**CSS:** Coastal Sage Scrub: A natural community comprising plants and animals.

**CEQA:** The California Environmental Quality Act: Sets requirements for environmental review (Environmental Impact Reports) by local and state government of a wide range of public and private projects.

**CESA:** California Endangered Species Act.

**ESA:** Federal Endangered Species Act.

**HCP:** Habitat Conservation Plan: A plan required in support of a federal Section 10(a) permit under the federal ESA.

**MOU:** Memorandum of Understanding: A common form of formal agreement between government agencies.

**NCCP:** Natural Community Conservation Plan: Usage here is that the abbreviation NCCP generally refers to a plan authorized pursuant to the Natural Communities Conservation Planning Act.

**OMSP:** Ongoing Multi-Species Plan: A term applied to subregional conservation efforts already underway that will function as the equivalent of a NCCP if the NCCP standards are applied.

**Section 4(d):** A section of the federal ESA that allows special rules to apply to a species listed as threatened. Can specify the conditions allowing incidental take.

**Section 10(a):** A section of the federal ESA that governs issuance of a permit to allow incidental take of a listed endangered species.

**Section 2081:** A section of CESA that governs take of listed endangered species.

**Special Rule:** See Section 4(d), above.

**USFWS:** United States Fish and Wildlife Service.

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## 7.2 Literature

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The following references are cited in the text or provide additional relevant information. Copies of any of these can be obtained from the Resources Agency or from the CDFG Coastal Sage Scrub Project Coordinator.

California Fish and Game Code: Department of Fish and Game, Chapter 10. Natural Community Conservation Planning, 1991.

Federal Register March 26, 1993. Listing California Gnatcatcher as Threatened

Federal Register July 20, 1993. Proposed 4(d) rule for Threatened California Gnatcatcher.

Memorandum of Understanding By and Between The California Department of Fish and Game and The United States Fish and Wildlife Service Regarding Coastal Sage Scrub Natural Community Conservation Planning in Southern California, December 4, 1991.

Memorandum of Understanding by and Between The Irvine Company and the United States Fish and Wildlife Service Regarding the Advance Habitat Conservation Plan for The California Gnatcatcher, Cactus Wren, and Orange-Throated Whiptail Lizard, April 16, 1992.

Natural Community Conservation Planning/Coastal Sage Scrub, An NCCP Special Report No. 1, Dennis Murphy, Acting Chair, Scientific Review Panel, February 1992.

Natural Community Conservation Planning/Coastal Sage Scrub, An NCCP Special Report No. 2, John O'Leary, Dennis Murphy, and Peter Brussard, Scientific Review Panel, March 1992.

United States Marine Corps Regarding: Proposed Regulations for Establishment of Habitat Protection Areas, Letter June 17, 1992.

United States Fish and Wildlife Service, Interim National Conservation Planning Guidelines, July 30, 1990.

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